

**California Department of Water Resources  
Oroville Division, State Water Facilities  
FERC Project No. 2100**

**Process Protocols**

**I. Introduction and Purpose**

This document states the Process Protocols for relicensing the Oroville Division, State Water Facilities (Federal Energy Regulatory Commission Project No. 2100) (Oroville Facilities<sup>1</sup> or Project). It is intended to provide a framework for communication, cooperation, consultation, and eventual settlement among the California Department of Water Resources (DWR), the Federal Energy Regulatory Commission (FERC or Commission<sup>2</sup>), government and public agencies, federally recognized Indian Tribes, and other interested parties and organizations (collectively "Participants<sup>3</sup>") in connection with relicensing the Oroville Facilities. The Project is currently operated by DWR subject to the terms and conditions of a license issued by FERC in 1957.

**A. Description of the Oroville Facilities**

The Oroville Facilities are located on the Feather River in Butte County, California, and include the Oroville Dam and Reservoir, the Edward Hyatt Hydroelectric Powerplant, Thermalito Powerplant, Thermalito Diversion Dam Powerplant, Thermalito Forebay and Afterbay, and associated recreational and fish and wildlife preservation and enhancement facilities. The Oroville Reservoir (also known as Lake Oroville) is the principal water storage facility of the State Water Project (SWP) which conserves and delivers water to over two-thirds of California's population and almost 1,000,000 acres of farmland.

The hydroelectric facilities at the Oroville Facilities have a combined licensed capacity of approximately 762 MW. The license project boundaries of the Oroville Facilities are depicted in the Initial Information Package (IIP) prepared to facilitate relicensing.

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<sup>1</sup> Historically, FERC has referred to the Oroville Facilities as the Feather River Project.

<sup>2</sup> FERC will participate in the relicensing process, but will not be a party to any settlement agreement.

<sup>3</sup> Some Participants have special roles during relicensing. Select resource agencies and Indian Tribes have statutory roles and responsibilities under Federal law. DWR has responsibility for preparing and filing the license application.

Additional information about the Oroville Facilities is included in the IIP, which was distributed to all requesting parties in January and February 2001.

## **B. Nature of the Relicensing Process**

The existing license from FERC to operate the Oroville Facilities expires on January 31, 2007. DWR must file a notice of intent to seek a new license by January 31, 2002 and its application for a new license by January 31, 2005. On January 11, 2001 DWR received FERC approval to use the Alternative Licensing Procedures (ALP) for obtaining a new license.

FERC specified these procedures in its Order No. 596 (18 C.F.R. §4.34(i)). The ALP was adopted by FERC to:

- “(i) Combine into a single process the pre-filing consultation process, the environmental review process under the National Environmental Policy Act and administrative processes associated with the Clean Water Act and other statutes;
- (ii) Facilitate greater participation by and improve communication among the potential applicant, resource agencies, Indian tribes, the public and Commission staff in a flexible pre-filing consultation process tailored to the circumstances of each case;
- (iii) Allow for the preparation of a preliminary draft environmental assessment by an applicant or its contractor or consultant or a preliminary draft environmental impact statement by a contractor or consultant chosen by the Commission and funded by the applicant;
- (iv) Promote cooperative efforts by the potential applicant and interested entities and encourage them to share information about resource impacts and mitigation and enhancement proposals and to narrow any areas of disagreement and reach agreement or settlement of the issues raised by the hydropower proposal; and
- (v) Facilitate an orderly and expeditious review of an agreement or offer of settlement of an application for a hydropower license, exemption or amendment to a license.” (18 C.F.R. §4.34(i)(2))

In accordance with the ALP, DWR will prepare an application and a Preliminary Draft Environmental Assessment (PDEA) in coordination with relicensing Participants. Consultation with Indian Tribes, regulatory agencies, and land management agencies leading up to the filing of the application for a new license, and environmental review of the project, will be consistent with the ALP. The PDEA will replace Exhibit E (Environmental Report) which FERC requires in a “traditional” license

application process. FERC will then use the PDEA to finalize its own National Environmental Policy Act (NEPA) review process after the application is filed.

### **C. Role of FERC in Relicensing**

FERC licenses non-federal hydropower projects located on federal lands or on waters over which congress has jurisdiction under the Commerce Clause of the United States Constitution. Further information on FERC's role in relicensing is contained on its web site at <http://www.ferc.fed.us>. (See FERC's Hydroelectric Project Relicensing Handbook, dated April 2001.)

### **D. Participation in the Relicensing Process**

#### **1. Public Participation**

The relicensing process for the Oroville Facilities, including the scoping and review of the PDEA, is open to the public and broad participation is encouraged. In October 1999, DWR sent out an informal mailer to known and potentially interested government agencies, Indian Tribes, and other interested parties and organizations to initiate a mailing list of those interested in the relicensing process. DWR will continue to update this list as other interested individuals and organizations become known or identify themselves. The list along with public notices issued by DWR and FERC will be used to furnish notice of availability of information for public review and to provide notice of public meetings. Any party that wishes to be added to the list should contact:

Sue Larsen  
Department of Water Resources  
Room 1640  
P.O. Box 942836  
Sacramento, CA 94236-0001  
Telephone: (916) 653-1096  
Fax: (916) 653-9295  
E-mail: [slarsen@water.ca.gov](mailto:slarsen@water.ca.gov)

#### **2. FERC Staff Participation**

FERC staff may, without prior notice, participate in formal public meetings, Plenary Group, Work Group, and other meetings in this process prior to DWR's submittal of its license application, which will be no later than January 31, 2005.

**E. Purpose of Settlement Agreement**

The Participants in the ALP intend to reach a written settlement agreement that:

- (1) will facilitate development of a new license application and will serve as a basis for the new license and regulatory approval(s) necessary for FERC's issuance of that new license,
- (2) will state the mutually acceptable resolution of Participants' disputes that arose in connection with the original license for the Oroville Facilities, and
- (3) may include on a case-by-case basis, mutually acceptable resolution of Participants' disputes that are related to the future operations of the Oroville Facilities but that are or may be considered outside of FERC's jurisdiction. The primary purpose of the settlement agreement is (1).

**F. Duration of Process Protocols**

These Process Protocols will become effective upon approval by the Plenary Group. Once approved the Process Protocols will replace the Communications Protocol and become effective upon FERC's approval of DWR's request to use the ALP<sup>4</sup>. The Process Protocols will remain in effect until FERC notifies DWR that the PDEA and final license application have been accepted for filing with FERC as set forth in 18 C.F.R. §4.32(d). The Process Protocols may be extended by agreement among Participants.

**G. Revision of Process Protocols**

The Process Protocols may be revised as appropriate by agreement among Participants.

**H. Reservation of Rights**

The Process Protocols do not modify the rights or duties of any Participant, except that all Participants will make good faith efforts as provided herein to reach the settlement agreement described in Section I.E.

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<sup>4</sup> On May 1, 2001, the Plenary Group adopted the Process Protocols subject to periodic review and revision.

## **II. Proposed Structure and Purpose**

### **A. Introduction**

DWR, State and federal agencies, Indian Tribes, local government officials and interested members of the public will actively participate in the relicensing process as the Collaborative Team. Through facilitated discussions, brainstorming, and presentation of individual Participants' interests, the Collaborative Team will develop collective goals and objectives that "everyone can live with". These collective goals and objectives will then guide the Collaborative Team through the relicensing process to develop and negotiate settlement offers, and eventually enter into the settlement agreement described in Section I.E.

Reaching a settlement agreement that will be a basis of the new license requires mutual understanding of interests. Such mutual understanding will require the cooperation of Participants so that meetings and other collaborative efforts are conducted in an efficient manner. Participants with similar interests are encouraged to form coalitions and choose appropriate spokespersons to represent their interests throughout the relicensing process.

### **B. Three-Tier Structure**

The Collaborative Team will consist of and function at three levels.

#### Plenary Group

Comprised of primary spokespersons for Participant groups

Keeper of the "Collaborative Dream"<sup>5</sup>

Provides global perspective (identifies potential conflicts and balances resource plans)

Shepherds collaborative/settlement process from beginning to end

Stays informed of Work Group progress

Reviews Work Group recommendations for potential conflicts with other

Work Groups or timely pursues further evaluation

Meets Regularly

#### Work Groups

Address resource issues

Consider existing and new information

Keep Plenary Group informed

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<sup>5</sup> "Keeper of the Collaborative Dream" This phrase captures the essence of the Plenary Group's role as shepherd for the collaborative settlement process and convener of the forum where issues are: (1) debated, (2) recommendations from Work Groups and Task Forces are considered and balanced, (3) potential conflicts are addressed, and (4) actions are taken in a comprehensive collaborative manner. The "dream" aspect of the phrase speaks to the overarching desire of each Plenary Group Participant to realize that the time and effort each Participant exerts in achieving consensus and developing a durable settlement agreement results in something better than would have occurred absent the Participants' collaborative involvement in the Plenary Group.

Develop recommended solutions: First Phase Studies, Second Stage Protection, Mitigation, & Enhancement measures (PM&Es)  
Make recommendations to Plenary Group  
Meet regularly (more frequently than Plenary Group)

Task Forces

Subset of Plenary Group and Work Groups that may include members from more than one Work Group  
Convene to perform studies to address specific issues that may involve more than one resource  
Established to meet as needed  
Make recommendations to Work Groups and/or Plenary Group

**C. Purpose and Mission of Groups**

Plenary Group. The Plenary Group will be made up of Participants representing all interests. It is the keeper of the “collaborative dream” – it is responsible for shepherding the collaborative process from the beginning to end. Since FERC’s regulatory process requires DWR to submit a license application no later than January 31, 2005, it is incumbent on the Plenary Group to maintain a schedule consistent with that requirement. To do this, the Plenary Group will establish goals and objectives, develop an approach to achieve those goals and objectives, and maintain a close linkage to the Work Groups to make sure that FERC/DWR deadlines are satisfied.

The Plenary Group will maintain a global perspective and work to resolve issues that may arise within and between Work Groups. The Plenary Group will review the progress of all Work Groups to consider how their recommendations respecting studies and Protection, Mitigation and Enhancement (PM&E) proposals interrelate and how they may interact (positively or negatively) with other issues. The Plenary Group will identify conflicting proposals while there is still time to reconcile differences, adjust the proposals, and provide all Participants the opportunity to discuss development of an overall mix of studies, alternatives, and, eventually, PM&E proposals.

The Plenary Group will rely heavily on input from Work Groups when performing its responsibilities, in particular with respect to Work Group recommendations. Responsibility for the Collaborative Team’s approval of study plans and PM&E proposals rests with the Plenary Group.

Work Group Recommendations. Having reached consensus on a recommendation, a Work Group will select one or more responsible Participant(s) to: (1) request placement of the Work Group recommendation on the next Plenary Group meeting agenda, (2) make arrangements for appropriate copies for the Plenary Group, and (3) describe recommendations and respond to questions from Plenary Group Participants. The responsible Participant(s) will report any further questions or tasks requested by the Plenary Group to their Work Group in the event the Plenary Group requires further information before giving its approval.

Evaluation of Work Group Recommendations. Recommendations will be discussed at Plenary Group Meetings or, if not practicable or necessary, discussions will take place at a time agreed to by the Plenary Group, but prior to a recommendation being implemented. Participants of the relevant Work Group will be invited to attend and participate at the Plenary Group meeting when the recommendation is discussed.

Time-Sensitive Work Group Recommendations. If a recommendation involves time-sensitive action items when it is sent to the Plenary Group, the recommendation will clearly identify a deadline (no shorter than one week from receipt of the recommendation) for questions or objections by Plenary Group Participants. If a Plenary Group Participant asks for further evaluation of a time-sensitive recommendation, it will take place promptly by telephone conference call or a special meeting, as appropriate.

A Work Group Participant will attend each Plenary Group meeting and brief the Plenary Group on the Work Group's progress and activities and answer any clarifying questions regarding the recommendation. The Work Group Participant will be responsible for briefing their Work Group of the discussion that occurred at the Plenary Group meeting.

The Plenary Group will meet regularly. It is anticipated that during the initial organizational period, the Plenary Group may need to meet monthly; however, it is expected that once established, the meetings will become less frequent.

Work Groups. Work Groups will be established as necessary to deal with resource issues. It is anticipated that there will be at least six Work Groups: (1) Cultural Resources, (2) Recreation and Socioeconomics, (3) Land Use, Land Management and Aesthetics, (4) Aquatic Resources (including Water Quality), (5) Terrestrial Resources, and (6) Engineering and Operations. (The Aquatics and Terrestrial Resources Work Groups will be initiated as a single Environmental Work Group.) More Work Groups might be formed or, for specific issues or studies, members of individual Work Groups may be combined to form a Task Force. Work Groups will define resource goals and objectives, develop an approach to achieve those goals and objectives, identify issues, develop study plans, establish and maintain critical paths, and resolve issues. At the beginning of the process Work Groups will focus on designing studies that will result in gathering credible scientific information relevant to decisions that are pertinent to the relicensing process; later Work Groups will focus on developing mutually agreeable PM&E proposals.

Work Groups will examine information necessary to resolve specific resource issues and use available and new information from relicensing studies to propose solutions to problems or develop PM&E proposals to address issues. Work Groups will focus on a variety of potential solutions to study issues and viable PM&E measures, and will consider the expected effectiveness of the solutions.

Work Group meetings will be held as necessary, but they are likely to occur more frequently than Plenary Group meetings.

Task Forces. Task Forces will be convened at the request of the Plenary Group or Work Groups. Task Forces will coordinate with the Plenary Group, as appropriate, to perform studies requiring specialized expertise specific to individual issues or input from more than one resource area. For example, a Task Force may be organized to address an issue that relates to both aquatic resources and recreational interests. Task Forces will report results of activities directly to the Plenary Group or Work Groups. It is anticipated that Task Forces will meet as needed to gather information and resolve questions specific to individual issues that may arise within Work Groups.

### **III. Communications Goals, Types, and Methods**

#### **A. Communication Goals**

The Process Protocols have the following communication goals:

- to encourage broad public and agency participation in the relicensing process;
- to provide ample notice of meetings open to attendance by the general public;
- to provide documentation of meetings and contacts with specific groups and individuals at which action is taken or decisions are made affecting relicensing;
- to provide a mechanism for establishing the formal consultation record required for the ALP;
- to provide a mechanism for public access to studies, meeting summaries and other components of the Public Reference File to be maintained by DWR.

#### **B. Types**

Both formal and informal communications will occur during the relicensing process. Formal communications will be through meetings of relicensing Participants and through formal correspondence. Informal communications are all communications other than those that occur in formal meetings or through formal correspondence.

#### **C. Communication Methods**

Consistent with State and federal paper reduction policies, and in accordance with the objectives of FERC Order No. 604, issued May 26, 1999, DWR intends, where possible, to transmit and receive written relicensing material in electronic format, and to publish the material on the Oroville Facilities relicensing web site. The



Oroville Facilities relicensing web site can be accessed at <http://OrovilleRelicensing.water.ca.gov>.

In most instances, the following procedures will be used:

<u>Document</u>	<u>Primary</u>	<u>By Request</u>
Meeting notices	Web site and E-mail	Hard-copy
Meeting summaries <sup>6</sup>	Web site	Hard-copy
Meeting materials	E-mail	Hard-copy
Major documents	Web site and/or CD-ROM	Hard-copy
Correspondence		
From DWR	Web site and E-mail	Hard-copy
From others	E-mail or disk	Hard-copy
Status reports	Web site with E-mail notice	Hard-copy

Substantive correspondence relating to relicensing between DWR and other Participants and between FERC and DWR will be included in the Public Reference File and posted on the Oroville Facilities relicensing web site. Copies of correspondence between Participants and FERC shall become part of the Public Reference File described in Section III.F and will be posted on the Oroville Facilities relicensing web site. DWR requests that all correspondence be sent to DWR within 10 working days via E-mail or disk to facilitate such posting. Hard copies will be scanned by DWR and posted on the Oroville Facilities relicensing web site.

## **D. Meetings**

### **1. Formal Public Meetings**

DWR will convene the following formal public meetings during the relicensing process to obtain comments from the general public: (1) joint agency/public initial information/NEPA scoping meetings; and, (2) a meeting to receive comments on the PDEA.

FERC will publish advance notice of the scoping meetings and meetings to receive comments on the PDEA in the *Federal Register*.

DWR will publish notice of these meetings in appropriate local and other media. In addition, DWR will post notice on its Oroville Facilities relicensing web site and provide notice of all such meetings to all Participants on the relicensing mailing list. At least 30 days advance notice of such meetings will be provided. Notice for those on the DWR mailing list will be by E-mail unless otherwise requested.

Unless otherwise specified, these meetings will be held in Butte County, California or in Sacramento, California. Summaries of these meetings will be

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<sup>6</sup> Includes scheduled teleconference meetings.

prepared, distributed to Participants, posted on the Oroville Facilities relicensing web site, included in the Public Reference File, and included in DWR's six-month progress reports to be filed with FERC as set forth in Section III.G.

## **2. Plenary Group and Work Group Meetings**

Plenary Group and Work Groups consisting of relicensing Participants will be convened for the duration of the Process Protocols<sup>7</sup>. The Plenary Group will meet periodically to review progress of the relicensing process, help resolve disputes referred by Work Groups, and provide a global perspective. Work Groups will address specific resource issues such as water supply, fishery resources, recreation and cultural resources. Such meetings will be held primarily in Butte County, California, although some meetings may be held in Sacramento, California or elsewhere. Summaries of these meetings, including decisions and action items, will be posted on the Oroville Facilities relicensing web site, and included in the Public Reference File in accordance with Section III.C above.

DWR will attempt to schedule such meetings months in advance of the meeting dates, but not less than 30 days prior to a meeting, except under extraordinary circumstances. Agendas will be provided to Plenary Group and Work Group Participants at least 15 days prior to the meeting. Notice will be by electronic mail unless notice by mail is requested.

DWR will attempt to provide meeting materials at least seven days in advance of the scheduled meetings to all Participants who request meeting materials. The intent is to provide meeting Participants with sufficient notice and information to facilitate meaningful participation. Specifically, Participants will have sufficient time for internal review of major policy matters before making decisions on such matters.

## **3. Meeting Summaries**

DWR will be responsible for preparing draft meeting summaries to be circulated as indicated in Section III.C. Meeting summaries will include the major issues discussed and any decisions or action items. Every effort will be made to distribute meeting summaries within 30 days of the meetings and at least 7 days in advance of the following meeting of the specific Work Group or Plenary Group. Corrections may be submitted within 15 days after distribution of the meeting summaries. Meeting summaries and revisions will be posted on the Oroville Facilities relicensing web site and included in the Public Reference File. Copies of the summaries and any corrections will be placed in the Public Reference File and used in the six-month progress reports to be filed with FERC (see Sections III.F and III.G).

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<sup>7</sup> All meetings are open to the public.

#### **4. Informal Communications**

It is anticipated that during the course of the relicensing process there will be informal communications (1) between DWR personnel and FERC staff, (2) between various other Participants and FERC staff, (3) between DWR and other Participants and (4) among Participants. Informal communications are all communications other than those that occur in formal meetings. Such informal communications, including caucuses during meetings, are permitted and encouraged, in order for Participants to share their perspectives on issues and identify and discuss areas of agreement and disagreement on issues.

Prior to DWR filing its formal license application, anticipated to take place between August 1, 2004 and January 31, 2005, DWR and Participants may engage in oral communications with FERC staff without prior notice to other parties.

If a person proposes to prepare and distribute to other Participants a summary of an informal communication with a FERC representative or another Participant, that person shall give the applicable FERC representative or Participant engaged in the informal communication an opportunity to review and approve the summary.

#### **E. Written Communications**

Substantive correspondence regarding relicensing of the Oroville Facilities between DWR and other Participants, DWR and FERC, or Participants and FERC shall become part of the Public Reference File and posted on the Oroville Facilities relicensing web site (e.g., letters from Participants regarding concerns relating to the ALP process, relicensing issues, study plans, study results, and proposed enhancements). Substantive correspondence between relicensing Participants may also be submitted for inclusion in the Public Reference File and on the Oroville Facilities relicensing web site as appropriate. Send copies to DWR at the address set forth in Section I.D. If possible, all correspondence should be sent in electronic format (E-mail or disk) so that it can be posted on the Oroville Facilities relicensing web site. Participants wishing to send correspondence to FERC should reference Docket Number P-2100 and send them to:

Mr. David P. Boergers, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Copies of all material related to relicensing the Oroville Facilities prepared by, or received by, a State or federal agency will be made available to the public in a manner consistent with the respective agency's procedure governing public records.

## **F. Public Reference File**

The Public Reference File associated with relicensing the Oroville Facilities will consist of copies of written correspondence, meeting summaries, study plans, study reports, and other related documents. DWR will maintain duplicate Public Reference Files at its Sacramento headquarters and at the Oroville Public Library. The addresses are:

Department of Water Resources  
Sacramento Headquarters  
1416 9<sup>th</sup> Street, Room 742  
Sacramento, California 95814

Oroville Public Library  
1820 Mitchell Avenue  
Oroville, California 95965

FERC will maintain a file of six-month progress reports and other pre-filing documents for viewing in its Public Reference Room in Washington, D.C.<sup>8</sup>. FERC will also make these documents available on its Records and Information Management System (RIMS) web site located at [www.ferc.fed.us](http://www.ferc.fed.us).

Materials will be available for review and copying by any member of the public at these three locations. Paper copies from DWR's Sacramento Public Reference File will be available for 10 cents per page and from the Oroville Public Library at the prevailing copy rate.

All other requests for documents from DWR should be directed to the Sacramento Public Reference File attendant and should state the document title and date and specify FERC Project No. 2100.

## **G. Six-Month Progress Report to FERC**

Pursuant to 18 C.F.R. §4.34(i)(6)(ii), DWR will provide FERC with a progress report every six months for the duration of the Process Protocols. Progress reports will include the Public Reference File log and Plenary Group and Work Group meeting summaries. Copies of the progress reports will be available to Participants and the general public at the Oroville Facilities relicensing web site or on CD-ROM, if requested.

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<sup>8</sup> Participants may access these documents through FERC's Records and Information Management System (RIMS) web site using Docket Number P-2100.

#### **IV. Roles, Decision Making, and Resolution of Issues**

The Oroville Facilities relicensing process is a public process that is open to anyone who is interested in Oroville Facilities relicensing activities subject to the following.

##### **A. Roles of Involved Parties**

Interested Parties. Interested Parties are those people or entities that have an interest in the outcome of the relicensing of the Oroville Facilities. To the extent desired by an individual Interested Party, the Interested Parties will remain informed about and provide input regarding relicensing activities.

Participants. Participants are a subset of Interested Parties who have chosen to be actively involved in the relicensing process, both with respect to the development of credible scientific information relevant to decisions that need to be made in the relicensing process and in the development of a settlement agreement. This will occur through participation at Plenary Group, Work Group, and Task Force meetings, working to collaboratively develop solutions, by providing written comments, or otherwise providing input.

Licensee. The Licensee is the State of California Department of Water Resources. DWR shall act as a full Participant in the relicensing process and will take the lead in developing necessary information and preparing formal documents. Working with the facilitator, DWR will propose agendas (for review, input, and changes by other Participants) for all meetings. Agendas are created to reflect the interests of the process; agendas are accepted at the beginning of the meeting by the Participants present.

DWR is committed to supporting the collaborative process in seeking lasting agreements to major issues related to relicensing the Oroville Facilities that are acceptable to as many of the Participants as possible. However, DWR is required to file an application to relicense the Oroville Facilities with FERC no later than January 31, 2005. A dedicated effort by all Participants is required to produce a settlement agreement (as described in Section I.E) by the required filing date.

Consulting Team. The Consulting Team includes scientific and recreational consultants, engineers, regulatory specialists, and public involvement and meeting facilitation consultants retained by DWR. The Consulting Team provides specialized expertise in the foregoing areas. Members of the Consulting Team will not have the authority to bind DWR or any other Participant to any agreements.

The Consulting Team has an obligation to support the collaborative process. The Consulting Team will assist in carrying out study plans developed by the

Work Groups and the Plenary Group<sup>9</sup>. The Consulting Team will also assist with developing draft documents for Work Group and Plenary Group consideration, scoping documents, draft study plans, reports and application proposals.

Facilitator. The facilitator has a primary role of promoting the success of the collaborative process. The facilitator will help Participants identify goals, identify issues, develop and maintain critical paths, accomplish creative problem solving, and reach resolution of issues. The facilitator will manage the Plenary Group and Work Group meetings in order to meet the overall objectives of the collaborative process. The facilitator's role is to help Participants reach a written settlement agreement, supported by DWR and other Participants, as described in Section I.E. The facilitator will adopt a proactive leadership style as the champion for the Oroville Facilities relicensing process; the facilitator works for "the process" and no particular agency or interest group. For large meetings, such as Plenary Group meetings, two Facilitators may be used; the back-up facilitator used mainly for identifying order of requests to address those present.

Statutory Authorities. Certain Participants have statutory authorities. While an agency with such authorities may enter into a settlement agreement, the agency will base its decision on adequate information in the record, and its determination that the settlement is consistent with its statutory authorities. Statutory authorities cannot be modified through a settlement agreement. A non-exclusive list of Participants with statutory authorities<sup>10</sup> is:

- United States Department of the Interior and Commerce – Fish and Wildlife Service (FWS)
- United States Department of Commerce – National Marine Fisheries Service (NMFS)
- Federal Energy Regulatory Commission (FERC)
- United States Forest Service (USFS)
- United States Bureau of Land Management (BLM)
- State of California Water Resources Control Board (SWRCB)
- State of California Department of Fish and Game (DFG)
- State of California Department of Parks and Recreation (DPR)
- Indian Tribes

## **B. Composition of Plenary Group and Work Groups**

Each Participant will identify a primary representative(s) for Plenary Group and Work Group participation. Rosters will be maintained for the Plenary Group and each Work Group. DWR will actively seek participation from other groups to ensure broad and balanced representation in both the Plenary Group and the Work Groups.

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<sup>9</sup> No individual can drive the process by merely requesting studies and expecting them to be performed. Study requests should include a basis for the study and be relevant to the relicensing process.

<sup>10</sup> Statutory authorities can be found on the Oroville Facilities relicensing web site at <http://OrovilleRelicensing.water.ca.gov>.

### **C. Responsibilities of Participants**

Attendance. Participants will make every effort to attend meetings and inform the facilitator in advance of any absence at a meeting or any change in representation. If possible each representative will identify a back-up person prepared to represent their organization when needed. The Collaborative Team may provide teleconference participation, as appropriate.

Agendas. Participants will assist the facilitator and DWR in developing meeting agendas and adhering to them. Participants, including individuals or groups of individuals, who desire to have an item added to a meeting agenda shall follow the protocol established in Section IV.E.

Preparation. Participants will come prepared for meetings having reviewed all previously distributed material relating to the meeting agenda. After the initial “getting up to speed” of all of Participants, if a Participant is new to the group, it is their responsibility to be briefed by their organization or to ask for a separate briefing by DWR, and if requested the facilitator, outside of the group meetings.

If a Participant would like the Plenary Group or a Work Group to consider a specific proposal, it is the responsibility of that Participant to prepare and provide whatever written material would be useful to the Plenary Group or Work Group and proceed in accordance with Section IV.E.

Participation. Participants will abide by the ground rules presented in Attachment 1. Each Participant is expected to be a willing contributor at meetings, to communicate actively and succinctly (listen, don’t interrupt, communicate early, no side conversations, be clear and concise, suggest solutions), to share all necessary factual information, and to strive for consensus on a timely basis. Each Participant is expected to be open minded, to listen to others, to respect others’ points of view, to be direct and considerate, show respect for other Participants, and be willing to explain their concerns to others.

Implementing Process Protocols. Each Participant is responsible for implementing the Process Protocols to contribute to the success of the collaborative process. Such implementation includes making efficient use of meeting time, mutual respect in discussion, a willingness to speak up if another Participant appears to be acting inconsistently with the Process Protocols, and a corresponding willingness to be corrected in like manner. Any level of the Collaborative Team may elect to assign the function of timekeeping or process observer to one or more Participants in a given meeting, if appropriate, to assure effective implementation of these Process Protocols.

Authority. Each Participant will have authority to represent its organization. The Participant will keep its organization briefed on an on-going basis about the activities of the Oroville Facilities relicensing process, the issues being addressed, and possible solutions to those issues. The Participant will incorporate the

input they have received from their internal discussions into their participation at the Plenary Group and/or Work Group level. When the Plenary Group or a Work Group identifies a viable solution and tries to determine whether there is consensus on a proposed recommendation, the Participant will state whether (1) they can live with the solution, (2) they think their organization can live with the solution, and (3) they need further approval from their organization before such consensus is reached. If the Participant has stated they can live with the solution, the Participant will favorably present the solution as a viable approach for their organization when discussing it within their organization.

Assignments. Ideally, all Participants of a Work Group will volunteer to work on outside-of-the-meeting assignments (following up on specific discussions, preparing proposals, laying ground work for future discussion). In some instances, it may be appropriate for DWR to provide draft materials for Work Group consideration. Participants should complete assignments on schedule.

#### **D. Decision Making**

Consensus. To the extent possible, Participants will resolve issues through consensus – where Participants (including DWR) can live with the decision being made<sup>11</sup>. In this relicensing, the Process Protocols adopt FERC's definition in its ALP rulemaking wherein consensus is defined as the (weight of) overriding opinion. Participants may be asked to “live with” something that is not their preferred ideal, if most Participants believe it is a fair decision, considering the many competing interests. The term “consensus-based approach” refers to a voluntary process in which Participants seek a mutually acceptable resolution of their differences with the overarching goal of developing a durable settlement agreement on all resource issues associated with the Oroville Facilities relicensing process.

The facilitator will work with the Plenary Group and all Work Groups throughout the relicensing process and may communicate separately with disputing parties for the purpose of reducing tension and achieving agreement on a process for resolving issues. To determine whether consensus exists, the facilitator will use a negative polling technique. In the event that minority dissenting opinions are unable to be accommodated within a proposed decision, the minority dissenting opinions will be recorded in an appropriate manner, including the meeting summaries.

Dispute Resolution. On an as-needed basis, the facilitator will use a variety of dispute resolution techniques (including mediation) to work through difficult issues. Participants will use an escalation process whereby they first strive to resolve conflicts that arise within the group where the conflict originates. If Participants fail to reach resolution at the initial level, by mutual agreement the affected Participants can elevate the dispute to the next level. For example, a conflict originating within a Work Group that is not resolved at the Work Group level may be elevated to the Plenary

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<sup>11</sup> See FERC Order 596 for its definition on consensus in its ALP rulemaking. (Order 596 can be found on FERC's web site at [www.ferc.fed.us](http://www.ferc.fed.us) under the topic Hydro.)



Group for resolution. If the Plenary Group is unable to achieve resolution, DWR will seek resolution with the appropriate regulatory agency(ies), excluding FERC, and report back to the Plenary Group. As a last resort, if DWR or other Participants in concert with the appropriate regulatory agency(ies) cannot resolve the issue, then the Plenary Group may file a request with FERC to resolve the disagreement according to the [dispute resolution] provisions of 18 CFR 4.34(i)(6)(vii).

## **E. Process Issues**

Requests to Present Items to the Plenary Group, Work Group, or Task Force. During the course of the relicensing process Participants may wish to present a proposal related to relicensing the Oroville Facilities. The procedure for making such a request would be during the “Action Items, Next Meeting and Next Steps” section of the agenda for the desired Plenary Group, Work Group or Task Force meeting. Participants should provide a description of the proposal and its relevance to the relicensing process and/or use of existing project facilities or lands. Participants will discuss the request, ask questions, and decide whether the proposal is relevant. Participants should provide direction as to time to be allotted for the presentation and consider materials to be presented and/or distributed at the meeting. The item would then occur on the agenda issued by DWR as provided in Section III.D.2 and Section IV.C above. Providing handouts (large photos, maps, etc.) and other written material to Participants at the meeting will be determined in advance.

Participants wishing to present a proposal believed to be subject to extraordinary circumstances or “time-sensitive” issues, should contact the facilitator to discuss the appropriateness of the proposal and urgency of presenting it to the Plenary Group, Work Group, or Task Force. The facilitator, in consultation with other affected Participants would consider the request in accordance with Section IV.C above.

Identifying Collaborative Process Breakdown. Process breakdown is not deadlock on a single issue or resource area, but is a breakdown of the whole collaborative process. Breakdown would be if the weight of opinion of the Participants is that the process has become a waste of their valuable time and resources and that the public interest might be better served under the circumstances of FERC directing completion of the pre-filing process and further steps required of DWR. At such time, DWR and the Participants will review and consider the entire process and attempt to re-establish and maximize balanced participation to get the collaborative process back on track.

Brainstorming. Participants will be encouraged to “brainstorm” a variety of solutions to specific issues. When a Participant identifies possible solutions it is on behalf of the Work Group, not their individual organizations.

Tracking Issues and Resolutions. DWR will track the progress of Work Groups by maintaining an annotated list that identifies specific issues, status of the issues, and resolutions. While a Participant will not be precluded from reopening a resolved issue, Participants will make every effort to move forward once decisions have

been made and to only request that a Work Group revisit decisions in limited situations. No Participant or represented organization is bound by any preliminary agreements on individual issues, although all Participants recognize that such preliminary agreements are the necessary basis for reaching the written settlement agreement described in Section I.E. However, Participants may enter into binding agreement(s) providing for implementation of specific PM&E measures in advance of the settlement agreement described in Section I.E or FERC's issuance of a new license.

Information. Participants will have access to all documents developed during the relicensing process. DWR and all Participants will distribute necessary information on a timely, equal and open basis. Information developed during the relicensing process will be accessible to the public as required by the Public Records Act (California Gov. Code §6250 et seq.) or other applicable sunshine law.

Some information may be confidential under California or other applicable law. An example is information on Native American graves, cemeteries, and sacred places. It is the responsibility of a Participant providing information that is confidential under applicable law to identify the information and inform the group. Participants may be requested to sign a confidentiality agreement prior to receiving the confidential information. All Participants will abide by such a confidentiality agreement and applicable law pertaining to confidential information.

To the extent that non-confidential data or information is draft, preliminary or otherwise qualified, and if Participants use such data/information outside of the context of the Oroville Facilities relicensing process, they will appropriately qualify the data/information.

The Oroville Facilities relicensing process will involve negotiations of disputed issues which includes an effort to reach a written settlement agreement. Settlement offers and negotiating positions may be made in confidence, and Participants will not disclose offers made in confidence outside of their respective organizations, or use them as evidence, admission, or argument in any adjudicatory proceeding. When Participants are ready to undertake negotiations, they will first consider and decide how best to assure the confidentiality of settlement offers and negotiating positions and will amend the Process Protocols as appropriate.

Media Relations. Since Plenary Group and Work Group meetings are open to the public media representatives can be expected to attend and will have access to all non-confidential documents developed during the relicensing process. In addition, DWR intends to prepare quarterly newsletters to update interested members of the public and the media on the relicensing process. Participants understand that "debating the process in the media" can undermine the collaborative process. Participants will determine appropriate stages at which to formally update the media on the progress of the relicensing process and will fashion such updates as a group. Participants agree to represent the collaborative process to the media in a balanced manner and to notify the Plenary Group of any individual Participant's media contact.

## **Attachment 1**

### **Ground Rules for Participants**

- Actively participate – commit to success of the process
- Respect others
- Be brief and prepared
- One person speak at a time
- Oroville Facilities relicensing focus
- Listen to each other
- Leave “baggage” at the door
- Communicate interests, not positions
- Help involve all
- Seek solutions for all – solving challenges rather than winning battles
- No “gunny sacking” – raise concerns early

### **Ground Rules for Facilitator**

- Help group accomplish objectives
- Help guide discussion
- Enforce participant ground rules
- Help involve all
- Ask “why” to clarify
- Manage time
- Track actions, next steps, deadlines